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SERIES LP d/b/a SERIES III, WOLF
6 FAMILY SERIES LP d/b/a SERIES VII;
ONTARIO ENTERPRISES OF THE WOLF
7 FAMILY SERIES LP

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF NEW YORK**

11 In re: Case No. 18-23538-RDD
12 SEARS HOLDINGS CORPORATION, (Jointly Administered)
13 Debtor.
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16 **OBJECTION OF WOLF FAMILY SERIES LP D/B/A SERIES III, WOLF FAMILY**
17 **SERIES LP D/B/A SERIES VII, ONTARIO ENTERPRISES OF THE WOLF FAMILY**
18 **SERIES LP TO (A) NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND**
19 **ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B)**
20 **NOTICE OF SUCCESSFUL BIDDER AND SALE HEARING**

21 Wolf Family Series LP d/b/a Series III, Wolf Family Series LP d/b/a Series VII,
22 Ontario Enterprises of the Wolf Family Series LP (collectively “Wolf”) hereby files this
23 objection (the “Objection”) to (a) the *Notice of Cure Costs and Potential Assumption and*
24 *Assignment of Executory Contracts and Unexpired Leases in Connection With Global Sale*
25 *Transaction* [Docket No. 1731] (the “Cure Notice”); and (b) the Global Sale Transaction
26 as described and defined in the *Notice of Successful Bidder and Sale Hearing* [Docket No.
27 1730] (the “Successful Bidder Notice”). In support of this Objection, Wolf states as
28 follows:

29 **BACKGROUND**

30 1. Beginning on October 15, 2018 (the “Petition Date”) and continuing

1 thereafter, the Debtors each filed a voluntary petition for relief under Chapter 11 of Title
2 11 of the United States Code (the “Bankruptcy Code”).

3 2. On November 19, 2018, the Court entered the *Order Approving Global*
4 *Bidding Procedures and Granting Related Relief* [Docket No. 816] (the “Global Bidding
5 Procedures Order”).¹

6 3. On January 18, 2019, the Debtors filed the Successful Bidder Notice, which
7 gave notice, among other things, that Debtors had determined the offer submitted by
8 Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., to acquire
9 all or substantially all of the Global Assets was the highest and best offer for the Global
10 Assets received. Attached to the Successful Bidder Notice as Exhibit B was a copy of the
11 asset purchase agreement between the Buyer and Debtors (the “APA”).

12 4. Also on January 18, 2019, the Debtors filed the Cure Notice. Exhibit A to
13 the Cure Notice identifies a purported “executory contract” with “Series VII of the Wolf
14 Family” and no other information. *See*, Cure Notice, Exhibit A., p. 263, at No. 6308, a
15 true and correct copy of which is attached hereto as Exhibit 1. Although unclear from the
16 Cure Notice, it appears that the Debtors are proposing to assume an unidentified executory
17 contract with Wolf. The problem begins with there is no such executory contract.

18 5. Wolf (and specifically Wolf Family Series LP d/b/a Series VII) is a party to
19 an unexpired sublease of real property with Debtors (the “Sublease”) for a portion of the
20 real property leased by Debtors from Wolf (and specifically Wolf Family Series LP d/b/a
21 Series III) (the “Master Lease”) and identified as Store #3483.

22 **PRELIMINARY OBJECTIONS**

23 6. Given the vague and utterly confusing description, or lack thereof, in the
24 Cure Notice, Wolf is left with no alternative but to object to preserve its rights, interests,
25 claims and defenses to any proposed cure and assumption and assignment of the Sublease.

26 _____
27 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the
28 Global Bidding Procedures Order.

1 Wolf objects for other reasons:

2 a. The Sublease is inescapably intertwined with the Master Lease and
3 cannot be assumed or assigned without the Master Lease being similarly assumed and
4 assigned;

5 b. The Lease and Sublease are both in default and Debtors' have are in
6 breach of the terms thereof by virtue of their failure to maintain and secure the real
7 property and Store No. 3483 after closing operations on or about January 15, 2019. Store
8 No. 3483 as well as the surrounding leased property were breached and a number of
9 squatters took up residence thereon. Worse yet, repeated requests from Wolf to Debtors'
10 counsel were ignored before and thereafter. Wolf was denied access to the leased premises
11 for purposes of conducting an inspection and securing the property before the squatters
12 broker in and took up residence. Thereafter, Debtors' counsel continued to ignore Wolf
13 requests and instead threatened Wolf with a violation of the automatic stay for exercising its
14 for declaring a default under the Lease in light of the Debtors' post-Petition Date breaches;
15 and,

16 c. Wolf objects to the Proposed Cure Amounts set forth in the Cure
17 Notice. In order to assume and assign the Lease and Sublease, the Debtors or the Buyer
18 must promptly cure all defaults. 11 U.S.C. §365(b)(1). The unpaid amounts actually owed
19 by the Debtors to Wolf for post-petition damages, costs and fees are being fixed. Wolf will
20 amend this Objection as soon as those amounts become ascertainable. Wolf estimates
21 these amounts at no less than \$25,000.00.

22 7. Wolf also objects to the Global Asset Transaction to the extent is includes an
23 assumption or assignment of the Lease or Sublease without first complying with Section
24 365(b)(1) of the Bankruptcy Code.

25 **RESERVATION OF RIGHTS**

26 8. Wolf continues to review the APA, the related pleadings, documents and
27 information that have been filed with the Court. Wolf also continues to gather information
28 regarding the extent of the damages caused by the Debtors' post-Petition Date breach so

1 that it may amend its Objection. In addition, a number of other agreements, pleadings and
2 information has not yet been disclosed and may be disclosed or learned after the filing of
3 this Objection. Accordingly, Wolf expressly reserves the right to amend, supplement,
4 and/or modify this Objection and to file in the future additional appropriate pleadings.
5

6 DATED: January 25, 2019

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

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8
9 By: /s/ Simon Aron

10 SIMON ARON

11 Attorneys for Creditor WOLF FAMILY SERIES
12 LP d/b/a SERIES III, ONTARIO ENTERPRISES
13 OF THE WOLF FAMILY SERIES LP
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CERTIFICATE OF SERVICE

I, Simon Aron, certify that on January 25, 2019, I caused a true copy of the following document(s) described as OBJECTION OF WOLF FAMILY SERIES LP D/B/A SERIES III, WOLF FAMILY SERIES LP D/B/A SERIES VII, ONTARIO ENTERPRISES OF THE WOLF FAMILY SERIES LP TO (A) NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (B) NOTICE OF SUCCESSFUL BIDDER AND SALE HEARING via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties listed below as indicated.

DATED: January 25, 2019

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: /s/ Simon Aron

SIMON ARON

Attorneys for Creditor WOLF FAMILY SERIES
LP d/b/a SERIES III, ONTARIO ENTERPRISES
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SERVICE LIST

VIA EMAIL

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